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Letter dated 5 September 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 4 October 2002 (S/2002/1161).

The Counter-Terrorism Committee has received the attached supplementary report from Papua New Guinea submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Note verbale dated 3 September 2003 from the Permanent Mission of Papua New Guinea to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

The Permanent Mission of Papua New Guinea to the United Nations presents its compliments to the Chairman of the Counter-Terrorism Committee and has the honour to attach the Papua New Guinea Government's second report on counter-terrorism (see enclosure).

Enclosure

Second report of Papua New Guinea to the Counter-Terrorism Committee

Paragraph 1

The National Executive Council (NEC) approved for Papua New Guinea to accede to the seven (7) Conventions and two (2) Protocols relating to international terrorism on 13 March 2003; The seven (7) International Conventions and two (2) Protocols were then tabled in the National Parliament in accordance with the National Constitution requirements. The National Parliament has approved for Papua New Guinea to accept in its own right the seven (7) International Conventions and two (2) Protocols relating to international terrorism.

Instruments of Accession are being prepared for dispatch to the United Nations for deposit with the Secretary-General of the United Nations.

This paves the way for Papua New Guinea to enact enabling legislation to implement the provisions of the International Conventions and two (2) Protocols. This includes the International Convention for the Suppressions of Terrorist Financing (1999).

Current legislations, such as the Banks and Financial Institutions Act, Central Banking Act, Securities Act, Securities Regulations or the Criminal Code Act may be looked at to ascertain the relevance to terrorist funding activities. Where amendments are required, this will be specifically addressed in the affected legislation.

The functions of the Central Bank under Financial Institutions Act, among other things, is to suppress or aid in suppressing illegal, dishonourable or improper practices of authorised institutions. *See Section 5c of the Banks and Financial Institutions Act No. 2 of 2000.* The Banks and Financial Institutions Act, however, do not define what constitutes an illegal act or practice. That issue may be addressed in review of the legislation so that terrorist financing is considered the ambit of that legislation by defining an illegal practice to also include terrorist financing.

Part IV of the Banks and Financial Institutions Act provides for Information and Investigations. See Sections 28 -35 of the Act, which requires financial institutions and authorized natural persons to report on specified information. Ordinary and suspicious transaction may be picked up and referred to the persons-in-charge or to the Central Bank or to the Police where fraudulent transactions are detected.

Authorised officers can commit offence under the Act by refusing to provide, omitting or destructing the provision of information. However, (see Section 29 (11), 31(9), 32(5), it seems that nothing in this Act shall compel the

penalties, see Section 54 and Schedule 5. That provides for either fine or imprisonment.

In the proposed Proceeds of Crime Bill, money laundering is a crime. Obligations of financial institutions to retail essential customer generated financial documents will be retained for a specific period, including transmission of funds between Papua New Guinea and a foreign country. The communication of information by financial institution to Police if requested is also provided.

It cannot be established at this stage if funds collected are for religious, charitable or cultural purposes are diverted for other purposes, particularly for financing of terrorism. Papua New Guinea is a Christian country and most churches do not support violence in any form. As to practical controls or measures, that is unclear and maybe something for our government to consider in this review.

The Central Banking Act including the Banks and Financial Institutions Act provide for all financial regulations in Papua New Guinea. It cannot be established if Papua New Guinea has an alternative remittance system or systems similar to a kind known as Hawala.

Subparagraph 2 (a)

It cannot be established if individuals or entities in Papua New Guinea solicit funds from abroad for terrorist activities; however, certain money schemes have actually surfaced in Papua New Guinea. The Central Bank has publicly condemned their operations on the basis that these schemes contravene the Banks and Financial Institutions Act.

The Governments through bilateral assistance form Australia is taking certain initiatives. A Technical Adviser has been assigned to Department of Attorney General to work on the following legislations:

- Proceeds of Crime Bill;
- Mutual Assistance in Criminal Matters;
- Amendments to Extradition Act.

Money laundering is a crime pursuant to the proposed Proceeds of Crime Bill. Obligations of financial institutions, to retain essential customer generated financial documents, will be retained for a specific period, including transmission of funds between Papua New Guinea and a foreign country. The communication of information by financial institutions to Police if requested is also provided for.

Under the Central Banking Act, the Foreign Exchange Regulation regulates foreign transactions of certain amounts of money to be brought in or out of Papua New Guinea. That in itself is a preventive measure and may raise suspicion it transactions exceeded the required amounts. Specific amendments may be required to the Criminal Cod Act, which essentially

makes terrorist acts criminal offences. Thus, collection of funds, recruiting or soliciting of funds from other countries may be in-built to the Criminal Code Act to be criminal offences.

Subparagraph 2(b)

The National Intelligence Organization (NIO) is charged with this under the national Intelligence Organization Act. NIO is in the process of submitting a Plan of Action to counter-terrorism and other transnational crimes.

Plan of Action will focus on coordination and sharing of intelligence.

The strategy is determined by the National Security Advisory Committee (NSAC), which includes all Heads of Departments or all Line Agencies involved in counter-terrorism.

Information which is provided by NIO or any other Line Agencies to the Chief Secretary to Government who is the Chairman of the NSAC, who then advises the Prime Minister, who is the Chairman of the National Security council (NSC) and the national Executive Council (NEC). The Chairman then requests for urgent meetings of the National Security Advisory Committee to be convened.

Subparagraph 2 (c)

The National Intelligence Organization has proposed appropriate legislation to be enacted to deal with contingencies and has maintained regular liaison with its counterpart organizations in the region to assist with this exercise.

Subparagraph 2 (d)

The proposed Mutual Assistance in Criminal Matters may provide for seeking assistance in criminal matters, namely to prevent the use of Papua New Guinea for terrorist acts outside of Papua New Guinea. Schedule 1 of the Extradition Act covers general terrorist acts such as assault onboard ship or aircraft with intent to destroy life or grievous bodily harm; and unlawful seizure of or unlawful exercise, of an aircraft by force or threat of force by any form of intimidation are extraditable offenses. See also Aircraft (Operators Liability Act).

Furthermore, there may be an offence of this nature under an international agreement to which both Papua New Guinea and the Treaty State are parties and which is designated under that international agreement as an offence for which extradition may be requested.

In any case, the Criminal Code Act may address this issue if further amendments are required.

Subparagraph 2 (e)

In the event criminal activities are committed outside of Papua New Guinea, the courts in Papua New Guinea cannot prosecute these acts for want' lack of jurisdiction. Likewise, a foreign national who resides in Papua New Guinea had committed criminal offences outside of Papua New Guinea cannot be prosecuted in Papua New Guinea for lack/ want of jurisdiction.

The only exceptions may be in the instance where Extradition Orders or Mutual Assistance in Criminal Matters have been requested through reciprocal arrangements. This may be addressed in the reviews alluded to earlier.

Subparagraph 2 (f)

At this point in time, Papua New Guinea is not a party to any bilateral or multilateral treaties on Mutual Assistance in Criminal matters. The technical Adviser will enact draft legislation on Mutual Assistance in Criminal Matters in due course.

In terms of extradition, Papua New Guinea has an Extradition Act. But Papua New Guinea is not a party to the current UN Convention on Extradition. The proposed review that is being contemplated will address some changes to modernize extradition process to conform to the international standards.

The Extradition Act provides for the extradition of fugitives to and from the Commonwealth countries and foreign States (other than Commonwealth States). The Commonwealth has a number of informal schemes in place on extradition and mutual assistance in criminal matters for its member States of which that the Extradition Act currently implements.

Nevertheless, certain bilateral extradition treaties exist, which were recognised on independence. There were treaties Australia entered into when Papua New Guinea was a colony of Australia. Some of these treaties will be reviewed because of the remoteness of Papua New Guinea nationals traveling to these countries and vice versa. These treaties may be replaced by a regulation that so provides that the Extradition Act ceases to apply in relation to a particular foreign state. In the absence of such a regulation, the treaty States recognized on independence still exist. The following are the treaty States found in Schedule 2 of the Extradition Act:-

- Austria
- Belgium
- Chile
- Czechoslovakia
- Ecuador
- Greece
- Guatemala
- Hungary

- Iceland
- Iraq
- Luxembourg
- Monaco
- Nicaragua
- Paraguay
- Poland
- Portugal
- Switzerland
- United States of America
- Uruguay
- Yugoslavia

The Designated (Commonwealth Countries) Regulation specifies the Commonwealth countries for purposes of the Extradition Act. These are:-

- Australia
- Bahamas
- Bangladesh
- Barbados
- Belize
- Botswana
- Canada
- Cyprus
- Dominica
- Fiji
- The Gambia
- Ghana
- India
- Jamaica
- Kenya
- Kiribati
- Lesotho
- Malawi
- Malaysia
- Malta
- Mauritius
- Nauru
- New Zealand
- Nigeria
- Seychelles
- Sierra Leone
- Singapore
- Solomon Islands
- Sri Lanka
- Swaziland
- Tanzania
- Tonga
- Trinidad and Tobago
- Tuvalu

- Uganda
- United Kingdom
- Western Samoa
- Zambia
- Zimbabwe

There is no timeframe set down for request for judicial assistance in criminal investigations or proceedings. In criminal cases, there is not time bar or limit as opposed to civil proceeding in Papua New Guinea.

In practice, the time it takes to complete a request depends on the nature of the case and how the investigations are being conducted. That determines basically the outcome of the timeframe. On average, it may take up to six (6) months at the most.

Subparagraph 2 (g)

Inter-agency coordination does exist to some extent with regard to Narcotics. Different Agencies deal with narcotics in Papua New Guinea. The Police, Customs, Health, Immigration, and National Surveillance Centre. The Narcotics Contol Board, which is an integrated body, is the agency responsible for policy, rehabilitation and awareness issues.

In two (2) of our border Provinces where Papua New Guinea share international maritime and land boundaries, we have established "Centre-points" where representatives of Line Agencies are housed under one roof to monitor and share intelligence information on movement of troops, rebel elements, illegal activities such as drug trafficking, gun-running, human smuggling as well as border controls.

NIO also have "travel intelligence officers" at key international points of entry and they liaise or operate closely with other authorities such as Immigration, Customs, Quarantine and Police.

Financial tracking is not in a developed state. This is an area that PNG needs technical assistance and training for our nationals in the respective authorities that would deal with these issues. For instance, Banks, Financial Institutions, Stock Exchange and Customs/ Tax officials would require further training.

In terms of security in relation to movement of terrorists, the National Security Advisory Council, an integrated body, regulates all security measures in Papua New Guinea. This body would have access to information on terrorists through their own contacts or networks in the region.

Counterfeiting, forgery or fraudulent use of identity papers and travel documents are criminal offences in nature and may essentially come within the ambit of the Criminal Code Act. The Passports Act and the Migration Act may cover certain aspects of fraudulent identity or travel documents. These

issues may be strengthened in the current reviews to the Migration laws currently underway in Papua New Guinea.

Subparagraph 3 (a) (b) (c)

The Papua New Guinea Counter-Terrorism Committee on direction from the National Security Advisory Council would be institutional mechanism to deal with all security measures dealing with terrorists.

There is measure already in the region that deal with law enforcement issues at the South Pacific Forum level. Papua New Guinea is a signatory to the Honiara Declaration on Law Enforcement. The essence of this Declaration is to keep the South Pacific Region free from criminal activities. Individual States are required to enact or amend legislation to implement the Honiara Declaration, such as the Proceeds of Crime Bill, Mutual Assistance in Criminal Matters and Extradition Act. Other issues may be taken up as situations unfold with developments of terrorism become critical.

Subparagraph 3 (c)

The application for the Extradition Act is given effect to by the existence of bilateral treaties. No new bilateral treaties exist except for the list of countries to which Australia concluded treaties with, which continued in operation for Papua New Guinea on Independence. This is found in Schedule 2 of the Act. The Designated Commonwealth Countries are also provided in the legislation. The information Commonwealth schemes on extradition, mutual assistance in criminal matters, etc., are implemented pursuant to the Act.

Currently Papua New Guinea and Indonesia are in the process of negotiating a Bilateral Extradition Act. This followed a Government (NEC) Decision two (2) years ago to initiate discussions with neighbours in the region.

Subparagraph 3 (d) and (e)

At the time of writing, the Submission on accession to the sever (7) International Conventions and two (2) Protocols relating to terrorism have been submitted to NEC for its considerations and approval. Thereafter it requires formal Parliamentary approval to accede to the Convention. Enacting legislation to implement these International Conventions and two (2) Protocols would require concerted effort by all affected agencies. Respective agencies administering the relevant Conventions would be responsible for the enactment or amendment of legislation.

Subparagraph 3 (e)

This has not been done yet. Review to the Extradition Act would address the issue of including offences set forth in the relevant Conventions as extraditable offences, including relevant bilateral treaties tow which Papua New Guinea is a party. This may be rose in the purported bilateral

extradition treaty with Indonesia, although a sensitive issued probably with Indonesia.

Subparagraph 3 (f)

Papua New Guinea is party to the 1951 UN Convention on the Status of Refugees and the 1967 Protocol. Although there is no domestic law in place, the convention is the binding to Papua New Guinea pursuant to the Vienna Treaty on Law of Treaties on the basis that the absence of domestic law cannot be used as basis for non-application of the Convention,

According to the Refugee Convention, refugee status will not be granted if an asylum seeker has a criminal record or involved in criminal activities or threat to national security.

Terrorist activities are criminal in nature; hence, Papua New Guinea is bound to refuse refugee status for national security reasons.

Subparagraph 3 (g)

Under the scheme of the Extradition Act request for extradition is satisfied if the extraditable offence is an offence of the sending State as well as the requesting State and attracts a penalty of two (2) years or more in imprisonment.

See Section 1 (4) of Extradition Act. For purposes of the Extradition Act, an offence against the law of a foreign State or Designated Commonwealth Country may be regarded as being an offence of a political character notwithstanding that there are no competing political parties in that State of country.

Paragraph 4

There is move now by Narcotics Control Board to review legislation on illicit drugs and drug trafficking. The Draft Proceeds of Crime Bills creates the offence of money laundering. The illegal arms trafficking to Papua New Guinea has always been a concern to Papua New Guinea. The Firearms Act has strict provisions on licensing of firearms.

The illegal movement of nuclear, chemical and biological and other potentially deadly materials would be of equal concern to Papua New Guinea. The transport of these harmful substances into Papua New Guinea cannot be affected unless appropriate authorities have been notified.

Papua New Guinea is a party to a number of International Environmental Conventions such as the Basel Convention and the Waigani Convention on the trans boundary movement of hazardous wastes, including the Convention on Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade. The application for the Environmental

Contaminants Act is relevant to consider. This is a potentially dangerous activity both in terms of the environment and to national security.

Submitted for your attention and appropriate action.